

MONTANA LEGISLATIVE HISTORY

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Chapter 638 19 93

Bill H 562 S _____ Original bill & history / c

H. Committee on Judiciary

Hearing Date(s) Feb 15 ✓ c

Feb 17 ✓ c

_____ c

_____ c

Date Out Feb 17 ✓ c

S. Committee on Judiciary

Hearing Date(s) Mar 10 ✓ c

Mar 23 ✓ c

_____ c

_____ c

Mar 24 ✓ c

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

HOUSE BILL NO. 562

INTRODUCED BY J. RICE, HERRON

IN THE HOUSE

FEBRUARY 10, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 18, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
	ADDITIONAL SPONSOR ADDED.
FEBRUARY 19, 1993	PRINTING REPORT.
FEBRUARY 20, 1993	SECOND READING, DO PASS.
FEBRUARY 22, 1993	ENGROSSING REPORT.
FEBRUARY 23, 1993	THIRD READING, PASSED. AYES, 99; NOES, 0.
FEBRUARY 24, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 1, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 24, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 27, 1993	SECOND READING, CONCURRED IN.
MARCH 29, 1993	THIRD READING, CONCURRED IN. AYES, 48; NOES, 0.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 1, 1993	SECOND READING, AMENDMENTS CONCURRED IN.
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APRIL 2, 1993

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

APRIL 12, 1993

REPORTED CORRECTLY ENROLLED.

SIGNED BY SPEAKER.

IN THE SENATE

APRIL 13, 1993

SIGNED BY PRESIDENT.

IN THE HOUSE

APRIL 14, 1993

DELIVERED TO GOVERNOR.

APRIL 19, 1993

RETURNED FROM GOVERNOR WITH
RECOMMENDED AMENDMENTS.

APRIL 22, 1993

SECOND READING, GOVERNOR'S RECOM-
MENDED AMENDMENTS CONCURRED IN.

THIRD READING, GOVERNOR'S RECOM-
MENDED AMENDMENTS CONCURRED IN.

IN THE SENATE

APRIL 24, 1993

SECOND READING, GOVERNOR'S RECOM-
MENDED AMENDMENTS CONCURRED IN.

THIRD READING, GOVERNOR'S RECOM-
MENDED AMENDMENTS CONCURRED IN.

IN THE HOUSE

APRIL 24, 1993

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

3/16	2ND READING CONCURRED	50	0
3/17	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE		
3/21	SIGNED BY SPEAKER		
3/24	SIGNED BY PRESIDENT		
3/29	TRANSMITTED TO GOVERNOR		
3/31	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 235		
	EFFECTIVE DATE: 10/01/93		

HB 562 INTRODUCED BY J. RICE, ET AL.
EXPAND SCOPE OF THE CRIME OF SEXUAL ABUSE OF CHILDREN

2/10	INTRODUCED		
2/10	REFERRED TO JUDICIARY		
2/10	FIRST READING		
2/10	FISCAL NOTE REQUESTED		
2/13	FISCAL NOTE RECEIVED		
2/15	FISCAL NOTE PRINTED		
2/15	HEARING		
2/18	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/20	2ND READING PASSED	99	0
2/23	3RD READING PASSED	99	0
	TRANSMITTED TO SENATE		
3/01	FIRST READING		
3/01	REFERRED TO JUDICIARY		
3/10	HEARING		
3/24	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/27	2ND READING CONCURRED	48	0
3/29	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/01	2ND READING AMENDMENTS CONCURRED	91	7
4/02	3RD READING AMENDMENTS CONCURRED	99	0
4/13	SIGNED BY SPEAKER		
4/13	SIGNED BY PRESIDENT		
4/14	TRANSMITTED TO GOVERNOR		
4/19	RETURNED TO HOUSE WITH GOVERNOR'S AMENDMENTS		
4/22	2ND READING GOVERNOR'S AMENDMENTS CONCURRED	99	0
4/22	3RD READING GOVERNOR'S AMENDMENTS CONCURRED	96	0
	TRANSMITTED TO SENATE		
4/24	2ND READING GOVERNOR'S AMENDMENTS CONCURRED	49	0
4/24	3RD READING GOVERNOR'S AMENDMENTS CONCURRED	49	0
4/28	SIGNED BY SPEAKER		
4/28	SIGNED BY PRESIDENT		
4/29	TRANSMITTED TO GOVERNOR		
5/13	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 638		
	EFFECTIVE DATE: 10/01/93		

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INTRODUCED BY House BILL NO. 562
J. Rice

A BILL FOR AN ACT ENTITLED: "AN ACT EXPANDING THE SCOPE OF THE CRIME OF SEXUAL ABUSE OF CHILDREN; PROVIDING THAT POSSESSION OF CERTAIN MATERIAL IS A CRIME; AND AMENDING SECTION 45-5-625, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-5-625, MCA, is amended to read:

"45-5-625. Sexual abuse of children. (1) A person commits the offense of sexual abuse of children if he the person knowingly:

(a) employs, uses, or permits the employment or use of a child in an exhibition of sexual contact conduct, actual or simulated;

(b) photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual contact conduct, actual or simulated;

(c) persuades, entices, counsels, or procures a child to engage in sexual contact conduct, actual or simulated, for use as designated in subsection (1)(a), (1)(b), or (1)(d);

(d) processes, develops, prints, publishes, transports,

1 distributes, sells, possesses, receives, purchases, with
2 intent--to-sell, exhibits, or advertises material-consisting
3 of--or--including--a--photograph--photographic--negative,
4 undeveloped--film--videotape,--or--recording-representing-a
5 child-engaging-in-sexual-contact any visual or print medium
6 in which minors are engaged in sexual conduct, actual or
7 simulated; or

8 (e) possesses material referred to in subsection
9 (1)(d); or

10 (e)(f) finances any of the activities described in
11 subsections (1)(a) through (1)(d), knowing that the activity
12 is of the nature described in those subsections.

13 (2) (a) A Except as provided in subsections (2)(b) and
14 (2)(c), a person convicted of the offense of sexual abuse of
15 children shall be fined not to exceed \$10,000 or be
16 imprisoned in the state prison for any term not to exceed 20
17 years, or both.

18 (b) If the victim is under 16 years of age, a person
19 convicted of the offense of sexual abuse of children shall
20 be fined not to exceed \$10,000 or be imprisoned in the state
21 prison for any term not to exceed 50 years, or both.

22 (c) A person convicted of the offense of sexual abuse
23 of children for the possession of material, as provided in
24 subsection (1)(e), shall be fined not to exceed \$500 or be
25 imprisoned in the county jail for a term not to exceed 6

1 months, or both.

2 ~~{3}--For the purposes of this section, "child" means any~~
3 ~~person less than 16 years old.~~

4 NEW SECTION. Section 2. Definitions. As used in
5 45-5-625, the following definitions apply:

6 (1) "Sexual conduct" means actual or simulated:

7 (a) sexual intercourse, whether between persons of the
8 same or opposite sex;

9 (b) penetration of the vagina or rectum by any object,
10 except when done as part of a recognized medical procedure;

11 (c) bestiality;

12 (d) masturbation;

13 (e) sadomasochistic abuse;

14 (f) lewd exhibition of the genitals or pubic or rectal
15 area of any person; or

16 (g) defecation or urination for the purpose of the
17 sexual stimulation of the viewer.

18 (2) "Simulated" means any depicting of the genitals or
19 pubic or rectal area that gives the appearance of sexual
20 conduct or incipient sexual conduct.

21 (3) "Visual medium" means any film, photograph,
22 videotape, negative, slide, or photographic reproduction
23 that contains or incorporates in any manner any film,
24 photograph, videotape, negative, or slide.

25 NEW SECTION. Section 3. Codification Instruction.

1 [Section 2] is intended to be codified as an integral part
2 of Title 45, chapter 5, part 6, and the provisions of Title
3 45, chapter 5, part 6, apply to [section 2].

-End-

DESCRIPTION OF PROPOSED LEGISLATION: An act expanding the scope of the crime of sexual abuse of children and providing that possession of certain material is a crime.

ASSUMPTIONS:

1. Two offenders have been incarcerated under Section 45-5-625, MCA, since FY91.
2. Added Average Daily Population (ADP) assumed to be less than 1 per year in Montana State Prison (MSP).
3. Current MSP budget will absorb impact of this act.

FISCAL IMPACT: No identifiable fiscal impact during the 1995 biennium.

David Lewis 2-13-93

DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Jim Rice 2-15-93
JIM RICE, PRIMARY SPONSOR DATE

Fiscal Note for HB0562, as introduced

HB 572

Owen's testimony (see EXHIBIT 3). REP. BROWN said one of Mr. Owen's concerns is whether an employer has responsibility for a contractor, and the answer is no. Contractors are covered by their own rights and shouldn't affect the relationship between the employer and the contractor's company.

Addressing the question, Ms. MacIntyre said that, in general, the company determines liability of an employer for any act of discrimination that occurs in the work place. It is general liability law to establish liability in the situation described.

Closing by Sponsor:

REP. BROWN said that this provision has been in federal law for 39 years and hasn't been affected by the above concern.

HEARING ON HB 562

Opening Statement by Sponsor:

REP. JIM RICE, House District 43, Helena, said that HB 562 is an effort to make child pornography illegal. Currently, Montana does not have such a law. HB 562 expands the current statute regarding special abuse to children by expanding the definition to include having a child photographed. Currently it is illegal to have a child photographed while engaged in activity which is thought to be sexual contact with another person. EXHIBITS 4, 5, 6, and 7

7

Proponents' Testimony:

John Conner, Montana County Attorney's Association, related that in his experience working with sexually abused children, he has found that, almost universally, people who engage in homophiliac type of behavior also frequently possess materials depicting children involved in sex acts. The MCAA has obtained search warrants so they can search out the houses of those people accused of those offenses for purposes of determining whether or not the evidence is available. It is difficult, however, to get that information before the court because it's not directly relevant to the charge itself unless law enforcement can establish, through an expert witness, the fact that this kind of behavior is happening. If this bill were passed, even though the offense is a misdemeanor, it would allow the charge of that misdemeanor to work in conjunction with felony offenses of child sexual abuse. That material can be brought before the court, and the connection can be made much more easily.

Sharon Hoff, Montana Catholic Conference, presented written testimony. EXHIBIT 8.

Father Jerry Lowney, Chairman, Social Customs Committee and Priest Council. Father Lowney also holds a doctorate in criminology and human behavior. He has worked with REP. RICE on child labor laws and was available for questioning.

Gail Hellander, President, The Primary Organization of Stevensville Stake of the Church of Jesus Christ of Latter-day Saints, presented written testimony. EXHIBIT 9

Opponents' Testimony: None

Questions From Committee Members and Responses:

CHAIRMAN FAGG asked Dr. Mark Moser, child psychiatrist, if there is a cure for these people. Dr. Moser said there is no scientific evidence of a cure to homophilia. He has evaluated several hundred sex offenders and said there's no question in his mind that child pornography contributes to the development of homophilia.

REP. BROOKE asked Ms. Gilkey, Department of Family Services, if DFS can handle an expansion of its budget to protect children from child pornography. Ms. Gilkey said there is no fiscal note on this bill, and that protecting the children, i.e., foster care and investigations, will not have a great impact on this bill.

Closing by Sponsor: None

HEARING ON HB 597

Opening Statement by Sponsor:

REP. TIM WHALEN, House District 93, Billings, said he believes a person ought to have the right to be tried by a jury of their peers without having to pay the costs of that jury if he/she loses.

Proponents' Testimony: None

Opponents' Testimony:

Bob Wood, Assistant City Attorney, City of Helena, said that, although the city agrees with REP. WHALEN'S concept, there is a problem with the bill. Over the last couple of years the city of Helena city court has assessed, roughly, \$3,000 in costs. That may seem like a minor amount, but it can have quite an impact on the court's jurisdiction. Mr. Wood also pointed out that current statute states the court may require defendants to pay costs. He

7 EXHIBIT
DATE 2-15-72
SB HB 562

House Judiciary
Capital Building
Helena, Montana

RE: For HB562, J. Rice, prohibit sexual exploitation of children

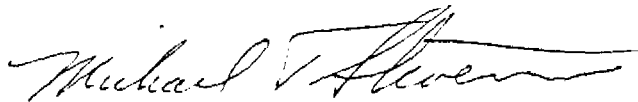
I am giving my opinion on this bill as a private citizen. I am a licensed social worker in the State of Montana, I helped to establish the Sexual Offenders Program in Helena.

In doing intakes on sexual offenders it became evident that many of them used and even made pornography with minors. Sexual conditioning is one of the strongest reinforcers and one of the hardest to alter once a pattern is set. Any law that restricts the use of minors or the theme of a minor being used is a positive protection for children. Unfortunately one female in four and one male in six will have been molested by an adult. These offenders are often victims of molestings themselves.

Our society is seeing a frightening change as groups are attempting to remove the age of consent. One of the stated objectives of the National Gay Task Force is to remove the age of consent, 1972 Gay Rights Platform, drawn up at the National Coalition of Gay Organizations Convention. Cameron, P. has done research published in Psychological Reports, 1986, 58, pp. 327-337, Psychological Reports, 1988, pp. 1227-1236 which state that homosexuals were 18 times more apt to incorporate minors into their sexual practices. This is not to say that only homosexual men sexually exploit children, my experience in working with the Sexual Offender Program was that there were also heterosexual offenders. What concerns me is that offenders begin with fantasies about age inappropriate children and then progress to actual molestings.

In treatment, one has to alter the inappropriate sexual fantasies to more age appropriate fantasies. The arousal patterns of offenders is much different than the population at large. These patterns are reinforced by child pornography.

I would strongly recommend that HB562 be supported. Thank you for your attention in this matter.



Michael T. Stevenson, MSSA
PO Box 122
Ft. Harrison, Montana 59636

EXHIBIT 2

DATE 2-15-93

SB. HB 562

Enough is Enough Campaign
800 Compton Road Suite 900
Cincinnati, Ohio 45230
February 15, 1993

The Honorable Russell Fagg
House Judiciary Committee
Capitol Station
Helena, Montana 59620

Chairman Fagg and members of the Committee

I welcome the opportunity to
send you testimony on behalf of the
Enough is Enough Campaign in
support of HB 562 - The Sexual
Exploitation of Children bill.

The Enough is Enough Campaign
was begun in 1992, by women,
for the purpose of eliminating the
exploitation of children connected
to the production, distribution and
use of child pornography. The
campaign has the support of women
across the nation including Barbara
Bush, Hillary Clinton and Pippin Gore.

Group is to enact or strengthen
child pornography laws in states
where there are no laws, or laws
are poorly written, providing little
or no protection for children.
Montana is one of seven such states.

On behalf of Enough is Enough
may I say that there are more
than enough facts to prove that:

1. one in three girls in this
nation will be sexually abused in
some way by age 18.
2. The production and use of visual
pornographic material provokes the
sexual exploitation and abuse of children
by pornographers and pedophiles.
3. Pedophiles use pornographic
material to remove a child's in-
hibitions making the child more
vulnerable to exploitation and abuse.
4. Pedophiles use child porn to learn
and practice the sexual abuse of children.
Let's get rid of their instruction booklets.

DATE 2-15-93

It is the charter of government ^{HB-562}
to protect its citizens. Our
children need protection from
exploitation and molestation
by pornographers and pedophiles.

I believe HB 562 would help
provide this protection. Therefore
I urge you to support and work
toward passage of this bill. Thank you.

Mrs. Wilma Wortman
2021 Hwy 141
Helmsville, ME 05943
(406) 793-5825



Montana Citizens for Decency through Law, Inc.

P.O. Box 4071 • Missoula, Montana 59806 • (406) 777-5025 or (406) 777-5862 Fax: (406) 777-5150

February 14, 1993

The Honorable Russell Fagg, Chairman
House Judiciary Committee
Capital Station
Helena MT 598620

Dear Chairman Fagg,

I am here to testify for HB562, a bill that would strengthen the laws in Montana against the sexual exploitation of children. I testify as president of Montana Citizens for Decency through Law and as a father of nine children.

The present Montana Law called Sexual Abuse Of Children (45-5-625 with definition of "sexual contact" at 45-2-101 [60]) is very limited in its protection of children against those who would exploit them for sexual purposes. Under the present law the following activities, on video or photographs, would be legal to distribute:

- * Children involved in sexual conduct of any type with animals
- * Children masturbating
- * Lewd exhibition of children's genital's, pubic or rectal area's
- * Children simulating sex
- * Sadomasochistic abuse involving children
- * Children defecating or urinating for the purpose of sexual stimulation of the viewer

Under the present law it is legal to possess any type of child pornography if intent to sell can not be proven. It therefore is legal for a pedophile to possess the photo's of himself molesting children if the identity of the children could not be made and intent to sell could not be proven.

In 1982, the Supreme Court in New York v. Ferber 458 U.S. 747 (1982), legally distinguished child pornography from obscenity. The court in Ferber focused on the harm to the victim rather than the effects of the material on the audience. In essence, child pornography became "obscene per se" because of the harm its production and distribution has

William Erickson
President

erry V. Crooks
ice-president

Wilford (Jr.) Johnson
Secretary Treasurer

upon the child victim. The court concluded that if the material depicted children in lewd sexual conduct, the material was subject to regulation. The bill that you have before you reflects the Ferber principles.

To some degree the market of child pornography has changed in the last decade or so. Today the child pornography market primarily consists of clandestine activities that result in materials being sold and traded among individuals through private communications. These transactions may involve no money, thereby eliminating the commercial motivation for much of the production and distribution of child pornography. This is not to say, however, that there are not individuals who participate in the distribution of child pornography purely for the monetary gain they may realize. In 1982, in another state, Catherine Wilson was prosecuted and convicted for distributing child pornography. At the time of her arrest she had a mailing list of 5000 names.

In Montana there is not a major problem with child pornography but as you will note from the enclosed newspaper clippings there have been times when charges could have been made if there had been a good law. The U.S. Attorney has handled two or three cases of child pornography but I believe that they happened in areas of Federal jurisdiction.

One of the most vivid memories of my law enforcement years was of photo's taken by a father as he sexually molested his 12 month old daughter in front of his other children and then photographed them in sexually suggestive positions. He was charged with the molestation but if it had been a situation where the children could not have been identified then he would have gotten away with the crime.

You may say, there isn't a problem in Montana so why bother with this law? Who is going to sacrifice their children to make it a problem? Will you?

Some may say that there is a federal law against this material so why do we need a state law? Why don't we do away with all our laws. Should we have to rely on the Federal Government for the protection of our children?

Although the ACLU is opposed to the production of child pornography, they support the free flow and display of child pornography once it has been produced. I believe that 99% of Montanans are totally opposed to it and I hope that your actions will reflect their desires.

Sincerely

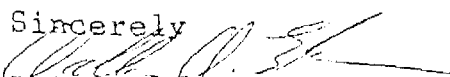

Dallas D. Erickson

EXHIBIT #6
DATE 2-15-93
[] HB-562

Pornography poses an even greater threat to the child victim than does sexual abuse or prostitution. Because the child's actions are reduced to a recording, the pornography may haunt him in future years, long after the original misdeed took place. A child who has posed for the camera must go through life knowing that the recording is circulating within the mass distribution system for child pornography.

(Shouvlin, "Preventing the sexual Exploitation of Children: A Model Act," 17 Wake Forest L. Rev. 535, 545 (1981))

7

Children involved in pornography can be psychologically scarred and suffer emotional distress for life. They may see themselves as objects to be sold rather than people who are important.

(U.S. General Accounting Office,
SEXUAL EXPLOITATION OF CHILDREN - A
PROBLEM OF UNKNOWN MAGNITUDE iii
(1982))

Mr. G. G. G. G.
Florence, Mt. 59833
Feb 14, 1993

The Honorable Russell Pagg
Chairman, House Judiciary Committee
Capital Station, Helena, Mt. 59620

Dear Chairman Pagg,

Five years ago the Boy Scouts of America identified five unacceptable in our society, which they have pledged to take a stand against. Those unacceptable are child abuse, drug abuse, alcoholism, hunger and homelessness. As part of their attack on child abuse, they developed a training program to help leaders identify signs of child abuse as well as some of the characteristics and typical behaviors of child abusers. They also instituted policies to deny child abusers access to leadership positions in B.S.A., thereby preventing access to our youth. As District Commissioner and Boy Scout Roundtable Commissioner and Day Camp Director, it became my responsibility to conduct this training and help implement the new policies in the Bitterroot District of the Montana Council. I still continue to conduct that training. As a result of this training I have developed an increasing awareness of the vicious threat that child abuse poses to the youth of our nation. I have, therefore, made it part of my personal agenda to take a stand on the issue of child abuse.

One of those issues is child pornography. There is a connection between child abuse, as well as the types of abuse, and pornography. It is an acknowledged fact

that child pornography is a type of
pedophilia. Pedophiles are sexual
abusers who identify, can recognize, and abuse
children in a definite way and
pornography to manipulate their emotions
and to abuse the child's natural
resistance. Pedophiles are generally patient
in their process of seduction, because
they are interested in long-term sexual
relationships.

Statistically, men, girls and even even
boys will be sexually abused before the age
of 12. One experiment of child sexual abuse what
the number of boy victims is much higher,
but that child sexual abuse is frequently
than girls. Personally, I find these
statistics to be extremely alarming and
unacceptable. As a society we must protect
our children.

Far more disturbing than the statistics is
the reality of this problem. The decision
made by the laws of victims and their
families is almost incomprehensible.
I am personally acquainted with seven
victims of child abuse. Some of these
victims were longtime friends or children
of friends. Each one of these individuals
and their families have suffered immensely
as a result of their abuse. Each one has
undergone extensive therapy, but not one
of them is cured at this time.

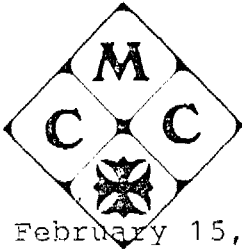
As I stated before, we know there is a
link between pornography and child abuse,
as well as other types of abuse. Pornography
has no redeeming qualities. It has no
worthwhile purpose. It is an ugly, vulgar
society that we should obliterate, as
aggressively, as we would cut out a

cancerous growth that might invade a child's body, or an adult's for that matter.

(Child pornography is totally unacceptable. There should be no question about that. I therefore support House Bill 562 and all of Youth Protection guidelines put out by Boy Scouts of America are in alignment with my position.

Yours truly,

Nathan J. Holmes
Congressman
Butterworth District
Montana Council BSA



Montana Catholic Conference

February 15, 1993

HOUSE BILL 562 - EXPANDING THE SCOPE OF THE CRIME OF SEXUAL ABUSE OF CHILDREN: PROVIDING THAT POSSESSION OF CERTAIN MATERIAL IS A CRIME: AND AMENDING SECTION 45-5-625 MCA

My name is Sharon Hoff, representing the Montana Catholic Conference. As Conference director, I am liaison for the two Montana Catholic Bishops in matters of public policy.

The Conference stands in support of HB562.

In late 1991 the U. S. Catholic bishops wrote a statement called "Putting Children and Families First". This document calls for public policy supporting children and families.

In this document the bishops state:

Physical and sexual abuse of children constitutes terrible betrayal of trust, a threat to their emotional and physical health, and a challenge for every institution that serves children.

Child pornography represents a particularly terrible threat to children. They serve as subjects in the production of pornography and sex objects for those who make use of pornographic materials. This illegal and immoral use of children for sexual purposes and profit must be confronted and stopped.

Children are a gift to the community, not a commodity to be used and exploited. They are the future of our country and deserve to be loved and cherished. Please support HB562.

EXHIBIT 9
DATE 2-15-9
~~SB~~ HB 562

the CHURCH of
JESUS CHRIST
of LATTER-DAY
SAINTS

STEVENSVILLE MONTANA STAKE

The Honorable Russell Fagg, Chairman
House Judiciary Committee
Capital Station
Helena, Montana 59620

Dear Mr. Fagg,

As the President of the Primary Organization of the Stevensville Montana Stake of the Church of Jesus Christ of Latter-day Saints, I speak for the 5,000 Primary children in the State of Montana. The Primary Organization is composed of all LDS children 1½ years of age and older.

I urge you to pass HB 562 on the Sexual Exploitation of Children. Please pass this bill to protect our innocent children from those who would exploit them for sexual purposes. Thank you.

Sincerely,

Gail M. Hellander

Gail M. Hellander
600 Main Street
Stevensville, Montana 59870
(406) 777-5605

REPS. BROWN, BIRD, BROOKE, MCCULLOCH, RUSSELL, TOOLE, WYATT.

Discussion:

REP. VOGEL said a similar law was passed in Oregon two years ago; in two years time, the number of DUI-related fatalities in Oregon has been reduced BY 38 percent. The bill has been reworked by REP. RICE.

Vote: HB 157 TO BE OFF TABLE. Motion carried 11-7. Those voting against the reconsideration are REPS. BROWN, BIRD, BROOKE, MCCULLOCH, RUSSELL, TOOLE, WYATT.

Motion: REP. VOGEL MOVED HB 157 DO PASS.

Discussion:

REP. VOGEL said one of the changes made in the bill was to allow the judge more discretion to return a forfeited vehicle to the family.

Vote: HB 157 DO PASS. Motion carried 11-7. Those voting against the do pass motion were REPS. BROWN, BIRD, BROOKE, MCCULLOCH, RUSSELL, TOOLE, and WYATT.

EXECUTIVE ACTION ON HB 562

Motion: REP. RICE MOVED HB 562 DO PASS AND OFFERED AMENDMENTS.

Discussion:

REP. RICE offered a conceptual amendment. He had spoke with sociologists working in the area of homophilia who use materials of pictures of sexual conduct as part of the therapy process; they were concerned that this ability not be taken away. REP. RICE said he had no objection to that and offered an amendment that Mr. MacMaster will prepare. The amendment will say, "this is not applicable to sex offender treatment programs."

Motion/Vote: CHAIRMAN FAGG moved to amend HB 562. Amendment carried unanimously.

Motion/Vote: REP. RICE moved an amendment to leave "possesses with intent to sell" as a felony, and "possession" as a misdemeanor. Amendment carried unanimously.

Motion: REP. RICE MOVED HB 562 DO PASS AS AMENDED.

Motion/Vote: REP. TOOLE moved an amendment to strike "proceeding and purchasing" from the bill. Amendment carried unanimously.

Vote: HB 562 DO PASS AS AMENDED. Motion carried unanimously.

HOUSE STANDING COMMITTEE REPORT

February 17, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 562 (first reading copy -- white) do pass as amended.

Signed: T. Russ Fagg
Russ Fagg, Chair

And, that such amendments read:

1. Page 2, line 1.

Strike: ", receives, purchases"

Insert: "with intent to sell"

2. Page 3, line 4.

Following: line 3

Insert: "(3) An offense is not committed under subsections (1)(d) through (1)(f) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if such an activity is financed, as part of a sex offender information or treatment course or program conducted or approved by the department of corrections and human services."

Committee Vote:

Yes ✓, No ✗.

39155960.Hao

Opponents' Testimony:

NONE

Questions From Committee Members and Responses:

Senator Grosfield asked John Conner, Montana County Attorney's Association, why sexual abuse should be defined. Mr. Connor said abuse, as it is now defined in the law, does not include sexual abuse, therefore sexual abuse needs to be defined.

Closing by Sponsor:

Representative Davis closed.

EXECUTIVE ACTION ON HB 521

Motion/Vote:

Senator Blaylock moved HB 521 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 234

Motion/Vote:

Senator Blaylock moved HB 234 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY. 7

HEARING ON HB 562

Opening Statement by Sponsor:

Representative Jim Rice, District 43, said HB 562 would expand the crime of sexual abuse of children to include possession of child pornography by making the act a misdemeanor and expands the definition of child pornography. Rep. Rice told the Committee about a group called Enough is Enough. Enough is Enough is an organization of women whose goal is to enact legislation making it illegal in all 50 states to possess child pornography. Montana is one of seven states that does not include the possession of child pornography as a crime. Rep. Rice said HB 562 would assist prosecutors to be able to introduce the crime into evidence for prosecution. Rep. Rice said allowing possession of child pornography to be a crime, prosecutors can charge the person with possession and allows them to introduce the evidence seized in the case. This would give prosecutors an opportunity to have better cases against those accused of child molesting. HB 562 expands the definition from sexual contact to sexual conduct. Rep. Rice said if it is a crime to possess child pornography it would enable law enforcement the ability to seize that and take them out of circulation. Rep. Rice submitted a

letter from Father Jerry Lowney. (Exhibit #2)

Proponents' Testimony:

John Connor, Montana County Attorneys Association, told the Committee that Montana is one of seven states that does not have a criminal penalty possessing materials that show children engaged in sexual acts. The majority of those states that do have a criminal penalty for possessing child pornography make it a misdemeanor, as does HB 562. People who sexually abuse children most often possess child pornography material. Making the possession of this material a crime, a prosecutor can present that material as evidence in the course of prosecution in conjunction with the felony offense. Mr. Connor said offenders need intensive long term supervision and treatment and not incarceration. Sending an offender to prison for a couple of years does not do the offender or society any good because when the offender gets out they would offend again if they did not receive treatment. Mr. Connor told the Committee that there was some concern about a person's first amendment rights about taking possession of obscene material. Mr. Connor told the Committee that there are two United States Supreme Court cases that hold that possessing child pornographic material is not a protective first amendment right. The difference between adult obscene material and child pornography is that the adults are consenting. Every state recognizes the act of sexual depiction between children as illegal. The Montana County Attorney's Association feels there is strong public policy reasons for this legislation and urges support for HB 562.

Harley Warner, Montana Association of Churches, said making possession of child pornographic material illegal may discourage the production of the material which would help protect children. Mr. Warner said the Montana Association of Churches is in support of decreasing the population at the state prison, but feels it is more important to protect the children of Montana. Mr. Warner rose in support of HB 562.

Sharon Hoff, Montana Catholic Conference, rose in support of HB 562. Exploiting children is wrong. Ms. Hoff told the Committee that children are an important part of our society and deserve to be protected.

Dallas Erickson read from prepared testimony. (Exhibit #3)

Steve White supports HB 562.

Gail Hellander read from prepared testimony. (Exhibit #4)

Wilma Wortman, Enough is Enough, told the Committee that Enough is Enough is a campaign to spark women to take action against pornography. The campaign has the support of women across the nation, including Barbara Bush, Hillary Clinton, and Tipper Gore. The immediate goal of the campaign is to strengthen child

pornography laws in states where there are no laws, or laws that are poorly written providing little or no protection. Montana is one of seven such states. A study of child molesters in prison show that 77% of those who molested boys and 87% of those who molested girls were regular users of child pornography. The typical child molester abuses over 360 children in their lifetime. One out of every three girls and one out of seven boys in the United States will be sexually abused before they reach 18 years of age. Sexually transmitted diseases strike more children each year than polio did in the 11 years of the polio epidemic. Therefore, HB 562 is a public health and safety issue. Ms. Wortman said it is the charge of government to protect its citizens. Child pornography is a visual record of a child being sexually abused. Children in Montana need and deserve protection from exploitation of pornographers and molestation by pedophiles. HB 562 would help provide that protection. Ms. Wortman urged support for HB 562.

Kathleen Homer read from prepared testimony. (Exhibit #5)

Amy Nord, a high school student, urged support for HB 562.

Opponents' Testimony:

NONE

Questions From Committee Members and Responses:

Senator Bartlett asked Mr. Connor about sexual conduct. Mr. Connor said the definition of sexual contact is "any touching of the sexual or other intimate parts of a person of another for the purpose of arousing or gratifying the desire on part of the sexual desire of the party." The intent of changing the wording to sexual conduct is to make the definition more specific which is necessary to avoid a constitutional challenge to the bill on the grounds that it is not specific enough.

Senator Bartlett asked Mr. Connor about if anything would be lost if "contact" was left out. Mr. Connor said no.

Senator Towe asked Mr. Connor about introducing evidence of child abuse. Mr. Connor said if there is probable cause to believe that a child is in a sexual abuse situation, law enforcement officers would obtain a search warrant that would allow them to search the premises of the prospective defendant. The search warrant would include language that based upon the officers training, experience, and knowledge they know that there is a consistent pattern of people who commit those kinds of offenses by possessing child pornography. If the court felt the warrant application contained sufficient probable cause to issue a warrant, the officer would obtain the information and the defendant would be charged with sexual abuse as well as possession of child pornography material.

Senator Towe asked Mr. Connor about bringing in evidence of pornographic material when prosecuting for sexual abuse. Mr. Connor said the material is not unrelated to the child abuse case, which is why the information is brought forth. Mr. Connor said it is not uncommon to prosecute felonies and misdemeanors at the same time. The statute on criminal procedure allows a prosecutor to do that if there is a connection between the offenses.

Senator Rye said that federal law prohibits interstate shipment of child pornography, but Montana does not outlaw child pornography if it was produced in the state. Mr. Connor agreed.

Senator Grosfield asked Mr. Connor about the word "child" in HB 562. Mr. Connor said a child is defined in the law as anyone under the age of 18.

Chair Yellowtail asked Mr. Connor about sub B. Mr. Connor said the younger the victim, the more serious the offense. Mr. Connor said there may be a serious question whether the defendant knew that the person involved was under the age of 18. Page 2, subsection 2(a) covers people between 16 and 18.

Chair Yellowtail asked Mr. Connor about the word "minor" on page 6, line 2. Mr. Connor said a minor and a child are defined as being anyone under the age of 18 in other statutes.

Chair Yellowtail asked Mr. Connor if the intention is that minor and child be defined as anyone under the age of 18. Mr. Connor said yes.

Senator Grosfield asked Mr. Connor about the lewd representation of the upper torso. Mr. Connor said that should be included in the definition of sexual conduct.

Closing by Sponsor:

Representative Rice welcomed suggestions to improve HB 562. Rep. Rice told the Committee that the Montana Sheriffs and Peace Officers Association support HB 562.

EXECUTIVE ACTION ON HB 555

Discussion:

Valencia explained the amendments. (Exhibit #6)

Motion/Vote:

Senator Blaylock moved to amend HB 555. The motion CARRIED UNANIMOUSLY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 3-10-93

BILL NO. HB 562

Fr. Jerry Lowney, PhD
Sociology Department
Carroll College
Helena, Mt., 59625
March 10, 1993

TO: JUDICIARY COMMITTEE, MONTANA STATE SENATE

RE: CHILD PORNOGRAPHY

Members of the Committee,

Unfortunately, I am unable to be present to testify in person before your committee as I did before the House committee.

I wish to support Representative Jim Rice's Bill regarding child pornography. I support the bill as you may suspect as a Catholic priest. In my role as the chairman of the Social Justice Committee of the Priests' Council for the Diocese of Helena I have supported legislation regarding children, particularly the revision of Montana's Child Labor Laws. Thus, I support any legislation that reduces the abuse and exploitation of children.

Moreover, as a sociologist I have strong comments regarding this bill.

One of my major fields in sociology is that of deviant behavior, including criminology and delinquency. I have co-authored a major text, Deviant Reality: Alternative World Views, and published several articles in this field.

In sociology there are many arguments regarding the dysfunctions of criminalizing deviant activity classified as "victimless crimes", i.e. when the activity involves only "consenting adults". All such libertarian arguments collapse, however, when the activity is "non-consenting" or involves persons other than adults, i.e. children.

In 1980 I joined a group of American sociologists to study the criminal justice of Denmark. At that time, Denmark had passed the most liberal laws dealing with victimless crimes, such as prostitution and pornography. In our work in Denmark, I and the other American sociologists were appalled at the child pornography displayed in stores. We felt this was truly exploitation of children. Before long, the Danish government reversed itself as regards child pornography. They banned the photography of children engaged in sexual activity.

The problem of the Danish child pornography did not stop with the government's ban. The United States and other countries have been besieged with material displaying children that had been photographed before the change in Danish law. The raids last weekend (including a raid in Missoula) involved such Danish material reproduced and distributed via computers.

Such materials stimulate a person who is vulnerable to becoming a pedophile. The depiction of such material holds a child forth as a sex object. The behavior displayed and the enticement is then "learned" by the person.

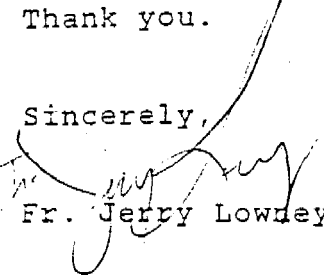
The material may not effect the sexual orientation of the person, but it may effect the object of such orientation.

There are other law enforcement arguments to support this legislation. I am sure that they will be presented by other proponents.

I urge the committee to recommend that this bill do pass.

Thank you.

Sincerely,


Fr. Jerry Lowney



Montana Citizens for Decency through Law, Inc.

P.O. Box 4071 • Missoula, Montana 59806 • (406) 777-5025 or (406) 777-5862 Fax: (406) 777-5150

William Erickson
President

Harry V. Crooks
Vice-President

W. Ford (Jr.) Johnson
Secretary/Treasurer

March 10, 1993

The Honorable Bill Yellowtail
Senate Judiciary Committee
Capital Station
Helena MT 598620

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 3-10-93

BILL NO. HB562

Reference: Testimony before Senate Judiciary Committee in
Support of HB562 Sexual Exploitation of Children.

Dear Chairman Yellowtail,

I am here to testify for HB562, a bill that would strengthen
the laws in Montana against the sexual exploitation of
children. I testify as president of Montana Citizens for
Decency through Law and as a father of nine children.

The present Montana Law called Sexual Abuse Of Children
(45-5-625 with definition of "sexual contact" at 45-2-101
[60]) is very limited in its protection of children against
those who would exploit them for sexual purposes. Under the
present law the following activities, on video or photographs,
would be legal to distribute:

- * Children involved in sexual conduct of any type with
animals
- * Children masturbating
- * Lewd exhibition of children's genital's, pubic or
rectal area's
- * Children simulating sex
- * Sadomasochistic abuse involving children
- * Children defecating or urinating for the purpose of
sexual stimulation of the viewer

Under the present law it is legal to possess any type of child
pornography if intent to sell can not be proven. It therefore
is legal for a pedophile to possess the photo's of himself
molesting children if the identity of the children could not
be made and intent to sell could not be proven.

- In 1982, the Supreme Court in New York v. Ferber 458 U.S. 747
(1982), legally distinguished child pornography from
obscenity. The court in Ferber focused on the harm to the

victim rather than the effects of the material on the audience. In essence, child pornography became "obscene per se" because of the harm its production and distribution has upon the child victim. The court concluded that if the material depicted children in lewd sexual conduct, the material was subject to regulation. The bill that you have before you reflects the Ferber principles.

To some degree the market of child pornography has changed in the last decade or so. Today the child pornography market primarily consists of clandestine activities that result in materials being sold and traded among individuals through private communications. These transaction may involve no money, thereby eliminating the commercial motivation for much of the production and distribution of child pornography. This is not to say, however, that there are not individuals who participate in the distribution of child pornography purely for the monetary gain they may realize. In 1982, in another state, Catherine Wilson was prosecuted and convicted for distributing child pornography. At the time of her arrest she had a mailing list of 5000 names.

In Montana there is not a major problem with child pornography but as you will note from the enclosed newspaper clippings there have been times when charges could have been made if there had been a good law. The U.S. Attorney has handled two or three cases of child pornography but I believe that they happened in areas of Federal jurisdiction. Last week, however, there was a nationwide crackdown on computer perverts who were trafficking in child pornography. According to the newspaper article that I have attached, a location in Missoula was searched as part of the investigation.

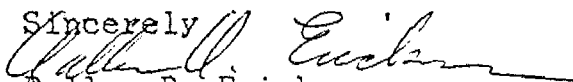
One of the most vivid memories of my law enforcement years was of photo's taken by a father as he sexually molested his 12 month old daughter in front of his other children and then photographed them in sexually suggestive positions. He was charged with the molestation but if it had been a situation where the children could not have been identified then he would have gotten away with the crime.

You may say, there isn't a problem in Montana so why bother with this law? Who is going to sacrifice their children to make it a problem? Will you?

Some may say that there is a federal law against this material so why do we need a state law? Why don't we do away with all our laws. Should we have to rely on the Federal Government for the protection of our children?

Although the ACLU is opposed to the production of child pornography, they support the free flow and display of child pornography once it has been produced. I believe that 99% of Montanans are totally opposed to it and I hope that your actions will reflect their desires.

Sincerely


Dallas D. Erickson

Pornography poses an even greater threat to the child victim than does sexual abuse or prostitution. Because the child's actions are reduced to a recording, the pornography may haunt him in future years, long after the original misdeed took place. A child who has posed for the camera must go through life knowing that the recording is circulating within the mass distribution system for child pornography.

(Shouvlin, "Preventing the sexual Exploitation of Children: A Model Act," 17 Wake Forest L. Rev. 535, 545 (1981))

7

Children involved in pornography can be psychologically scarred and suffer emotional distress for life. They may see themselves as objects to be sold rather than people who are important.

(U.S. General Accounting Office, SEXUAL EXPLOITATION OF CHILDREN - A PROBLEM OF UNKNOWN MAGNITUDE iii (1982))

EXHIBIT 3
B-10-93
HB 562

Feds raid 'computer perverts'

Child-porn warrants issued in 15 states

MIAMI (AP) — Federal agents raided 40 locations around the nation Thursday in the first crackdown on a worldwide computerized child porn ring, the U.S. Customs said.

The raids in 15 states from Florida to Washington may also lead to discovery of domestic pornographic "bulletin boards," said William Rosenblatt, chief of the U.S. Customs Service in Miami.

"It's not only the largest operation in U.S. history, I want you to know it's the first," he said. "It involves the high-tech exchange of child pornography — basically what we have here is a bunch of computer perverts."

Computer transmissions are quickly taking over from traditional magazine formats among pedophiles, he said.

No arrests were made immediately, but if possession is verified, suspects can be charged with federal counts that could put them in prison for 15 to 20 years, he said.

Missoula location among the targets

U.S. Customs agents and a Missoula police officer raided a Missoula location Thursday as part of a federal investigation into a worldwide, computerized child-pornography ring.

Almost nothing was known publicly Thursday about the Missoula search. The U.S. Customs office in Great Falls refused to release any information, and Missoula police Sgt. Bill Wicks, who acted as local liaison for the Missoula operation, said he had been sworn to secrecy by Customs agents.

A search warrant for the Missoula location was on file in U.S. District Court in Missoula, but the warrant has been sealed on the request of the government.

— Michael Moore, Missoulian

In Florida, warrants were served in Boca Raton, Maitland and Williston, Customs said.

The yearlong investigation, named "Operation Longarm," began with a child porn sting on a Miami man in March 1992.

That uncovered the existence of a mem

(See **PERVERTS**, Page A-8)

Missoulian 3-5-93

3
3-10-93
HB 562

Perverts

(continued)

bers-only, Denmark-based computer bulletin boards named Bamse, Screwdriver and Vestbjerg. They charge about \$80 a year to transmit photos by phone, Rosenblatt said.

The quality of the international computer transmissions by phone line was so good, recipients could make copies of the pornographic pictures on color printers in the United States with no loss in quality, he said.

Subscribers received a computer directory of photos — often in broken English — with titles like "India family love incest," or "Young girl play with dildo," and "Young Nippon girl standing nude." They then ordered the

photos, which were sent by computer modem.

"They range anywhere from what we call child erotica to explicit sexual activity involving the exploitation of minor children," Rosenblatt said. "Generally pedophiles want children that range from the age of 5 to 12."

Police in Denmark raided the three bulletin boards, arresting two men and finding about 6,000 customers listed. The names of about 100 U.S. residents were passed on to U.S. Customs, which narrowed the list down to the 40 raided Thursday.

State and local police accompanied customs agents on the raids to look for computer porn rings, and because past experience has shown a connection between such rings and child sexual abuse.

"Fifteen to 25 percent of the recipients of pedophile information are also convicted child mo-

lesters," Rosenblatt said. "These are human time bombs, ticking, waiting to go off."

Customs first became aware of computer-porn rings in the mid-1980s, but the improvement of technology in the last two years

has allowed them to spread rapidly around the world, Rosenblatt said.

To set up such an operation, computer owners now need only \$4,000 to \$5,000, although some have spent up to \$40,000.

ROUNDUP

Suspect denies sex charges

■ **MISSOULA** — A Lolo man accused of drugging a teenage boy and then having sex with him pleaded innocent Monday to charges of deviate sexual conduct, sexual assault, criminal endangerment and unlawful restraint.

David Rowland Gibson was arrested in early July after a 14-year-old Lolo boy told a Missoula County sheriff's detective that Gibson had injected him with some kind of drug, possibly LSD. The sexual acts allegedly occurred between June 1 and June 30, although the victim is unsure of the exact dates.

A subsequent search of Gibson's mobile home yielded pornographic magazines and other items of sexual paraphernalia.

Gibson's attorney, public defender Larry Mansch, asked District Judge Douglas Harkin to reduce Gibson's bail, saying that the teen had burglarized Gibson's home and may have fabricated the allegations. Deputy Missoula County Attorney Fred Van Valkenburg said medical evidence suggests the boy was subjected to homosexual sex.

Harkin kept bail at \$5,000.

— Michael Moore, Missoulian

Man charged with sexual assault

■ **MISSOULA** — A Missoula man was charged Friday with felony sexual assault for allegedly performing oral sex on a year-old boy. Shawn Steele, 22, 2227 River Road, allegedly committed the act Dec. 20. An arrest warrant was issued for Steele on Dec. 30, but he didn't make his initial court Justice Court appearance until Friday. According to court documents, the act took place at Steele's home after the child's mother had bathed the boy, then given him to Steele to put to bed. Later that night, the child was taken to the hospital with genital injuries, court records state. A neighbor of Steele's told Missoula County sheriff's Capt Larry Weatherman that the boy's mother previously had shown her magazines with pictures of children performing sexual acts. The mother told the neighbor the magazines belonged to Steele, records state. Weatherman searched Steele's home Dec. 27 and found several pornographic magazines. Justice of the Peace David Clark allowed Steele to remain free on his own recognition.

Missoula man charged with rape

■ **MISSOULA** — A Missoula man was charged Friday with raping 6-year-old twin sisters in June.

Jack H. Swearingen, 27, allegedly forced the girls to take their clothes off and pose for pictures, and also sexually assaulted them.

Swearingen was arrested Thursday after police learned that the girls, who spent the summer with their father in Tacoma, Wash., told their father they had been assaulted by a man named Jack. Detectives spoke with the girl's mother, who confirmed she had a friend named Jack Swearingen.

Police searched Swearingen's Charlo Street house Thursday night and said they found pictures of the naked girls along with pornographic magazines and videos.

Justice of the Peace David Clark set bail at \$25,000.

Michael Moore, Missoulian

B-2—Missoulian, Friday, February 21, 1992

MONTANA ROUNDUP

Lolo man pleads to sex crime

■ **MISSOULA** — A Lolo man has pleaded guilty to sexually assaulting a 14-year-old boy last summer.

David Rowland Gibson agreed to plead guilty Tuesday to one felony count of sexual assault and one misdemeanor count of unlawful restraint, according to Deputy Missoula County Attorney Fred Van Valkenburg. Charges of deviate sexual conduct and criminal endangerment were dismissed, Van Valkenburg said.

Gibson's trial had been scheduled to begin Tuesday. Gibson was arrested in early July after the Lolo boy told a Missoula sheriff's detective that Gibson had injected him with a drug that made him pass out.

the CHURCH of
JESUS CHRIST
of LATTER-DAY
SAINTS

STEVENSVILLE MONTANA STAKE

Senator Bill Yellowtail, Chairman
Senate Judiciary Committee
Capital Station
Helena, Montana 59620

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 3-10-93
BILL NO. HB 562

Dear Senator Yellowtail,

As the President of the Primary Organization of the Stevensville Montana Stake of the Church of Jesus Christ of Latter-day Saints, I speak for the 5,000 Primary children in the State of Montana. The Primary Organization is composed of children beginning at 1½ years of age.

I urge you to pass HB 562 on the Sexual Exploitation of Children. Please pass this bill to protect our innocent children from those who would exploit them for sexual purposes, and help to eliminate the chance of destroying our future adults and leaders.

Thank you for your attention to this matter.

Sincerely,

Gail M. Hellander

Gail M. Hellander
600 Main Street
Stevensville, Montana 59870
(406) 777-5605

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 5

DATE 3-10-93

BILL NO. HB562

147 Edens Lane
Florence, Mt. 59602
March 10, 1993

The Honorable Bill Yellowtail
Chairman, Senate Judiciary Committee
Capital Station, Helena, Mt. 59602

Dear Chairman Yellowtail,

Five years ago the Boy Scouts of America identified five unacceptables in our society, which they have pledged to take a stand against. Those unacceptables are child abuse, drug abuse, illiteracy, hunger and unemployment.

As part of their attack on child abuse they developed a training program to help leaders identify signs of child abuse, as well as some of the characteristics and typical behaviors of child abusers. They also instituted policies to deny child abusers access to leadership positions in B.S.A., thereby preventing access to our youth. As a volunteer serving as Cub Scout Roundtable Commissioner and Day Camp Director, it became my responsibility to conduct this training and help implement these new policies in the Bitterroot District of the Montana Council. I still continue to conduct that training. As a result of this training I have developed an increasing awareness of the serious threat child abuse poses to the youth of our nation. I have therefore, asked as part of my personal agenda to take a stand on the issue of child abuse.

One of those issues is child pornography. There is a connection between child abuse, as well as other types of abuse, and pornography. It is an undisputed fact that child pornography is a staple of pedophiles. Pedophiles are habitual abusers, who literally can victimize hundreds of children in their lifetimes. They use pornography to manipulate their victims and break down children's natural resistance. Pedophiles are generally patient in their process of seduction, because they are interested in long term abusive relationships.

Statistically, one in three girls and one in seven boys will be sexually abused before the age of eighteen. (Law enforcement officials generally believe that the number of boys is much higher, but that boys tend to report less frequently than girls.) I personally find both of these statistics to be extremely alarming and unacceptable. As a society we need to protect our children!

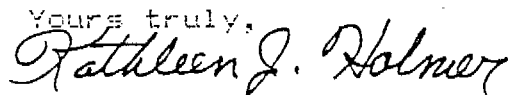
Even more alarming than the statistics is the reality of this problem. The devastation caused in the lives of victims and their families is almost incomprehensible. I am personally acquainted with nine victims of child abuse. Some of these victims are long time friends or children of friends. Each

of these individuals and their families have suffered incredibly as a result of their abuse. Each one has undergone and continues to undergo extensive therapy, but not one of them is completely cured at this time.

As I stated before, we know there is a link between pornography and child abuse, as well as other types of abuse. Pornography has no redeeming qualities! It has no worthwhile purpose! It is an evil in our society that we should obliterate as aggressively as we would cut out a cancerous growth invading a child's body, or an adult's for that matter!

Child pornography is totally unacceptable. There should be no question about that. I, therefore, support House Bill 562, and all of the Youth Protection guidelines put out by the Boy Scouts of America are in alignment with my position.

Yours truly,



Kathleen J. Holmer
Cub Scout Day Camp Director
Bitterroot District
Montana Council, B.S.A.

ATE 3-10-93

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: HB 521, 562, 573

Name	Representing	Bill No.	Check One	
			Support	Oppose
John Connor	MT County Atty Assn	HB 562	X	
HARLEY WARNER	ASSOC OF CHURCHES	HB 521 HB 562	X X	
Melissa Case	Montana Peoples Action	HB 573	X	
WALTER A. LACKOVICH	SELF	HB 573		X
Tootie Welker	MAPP	HB 573	X	
Craig Young	MLT Co	HB 573	X	
LAUREE KORTWIG	Christian Coalition of MT	HB 562/521	X	
SHARON HOFF	MT CATH. CONF	HB 521 HB 562	X	
Steve Wynn	SELF	521 562	X	
John E. Quinn	SELF	562	X	
Jenna E. Quinn	SELF	562	X	
Kathleen C. Helmer	Ministry	562	X	
Gail Hollander	Ministry Organization - LDS Church	562	X	
Billy Erickson	Montana Citizens for Freedom	562	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

Motion:

Senator Towe WITHDREW his motion to reconsider HB 357.

EXECUTIVE ACTION ON HB 235

Motion:

Senator Towe moved to AMEND HB 235. (Exhibit #7)

Discussion:

Senator Towe explained the amendment.

Motion:

The motion to amend CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Towe moved HB 235 BE CONCURRED IN AS AMENDED. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 562

Motion:

Senator Grosfield moved to amend HB 562. (Exhibit #8)

Discussion:

Senator Grosfield explained the amendment.

Senator Towe asked Valencia Lane about changing the word "minor." Ms. Lane said the word "minor" was changed to be consistent with the rest of the verbiage in HB 562.

Senator Towe asked Ms. Lane about "other intimate parts." Ms. Lane said the language is used in another section of law. "Other intimate parts" would be the stomach area.

Senator Blaylock asked Senator Grosfield if "breasts" applied to males and females. Senator Grosfield said yes.

Vote:

The motion to amend CARRIED UNANIMOUSLY.

Discussion:

Chair Yellowtail suggested defining the word "child."

Senator Towe asked Ms. Lane if the word "child" was defined elsewhere in the law. Ms. Lane said yes.

Senator Grosfield said he thought the word "child" was defined as anyone under the age of 18.

Chair Yellowtail told the Committee that the language should be amended into HB 562 to be certain that the definition is clearly defined.

Motion:

Chair Yellowtail moved to amend HB 562 on page 3, following line 11, insert, "For the purpose of this section, "child" means any person less than 16 years old.

Discussion:

Senator Rye asked Chair Yellowtail why "child" was being defined as any person less than 16 years of age. Chair Yellowtail said the definition would be consistent with other sections of HB 562.

Vote:

The motion to amend CARRIED UNANIMOUSLY.

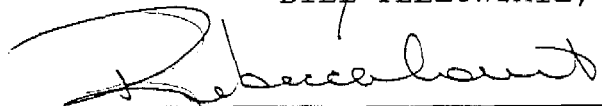
Motion/Vote:

Senator Harp moved HB 562 BE CONCURRED IN AS AMENDED. The motion CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: 12:00 p.m.


BILL YELLOWTAIL, Chair


REBECCA COURT, Secretary

BY/rc

Amendments to House Bill No. 562
Third Reading Copy (BLUE)

Requested by Senator Grosfield
For the Committee on Judiciary

Prepared by Valencia Lane
March 10, 1993

1. Page 2, line 6.

Strike: "minors"

Insert: "children"

2. Page 3, line 22.

Following: "genitals"

Strike: "or"

Insert: ", breasts,"

3. Page 3, line 23.

Following: "area"

Insert: ", or other intimate parts"

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 8
DATE 3-23-93
FILE NO. HB562

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 24, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 562 (first reading copy -- blue), respectfully report that House Bill No. 562 be amended as follows and as so amended be concurred in.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Page 2, line 6.

Strike: "minors"

Insert: "children"

2. Page 3.

Following: line 11

Insert: "(4) For the purposes of this section, "child" means any person less than 16 years old."

3. Page 3, line 22.

Following: "genitals"

Strike: "or"

Insert: ", breasts,"

4. Page 3, line 23.

Following: "area"

Insert: ", or other intimate parts"

-END-

 Amd. Coord.
Sec. of Senate

Rye
Senator Carrying Bill

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